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PROBLEMS IN THE AIRLINE INDUSTRY

HEARING

BEFORE THE

SUBCOMMITTEE ON ANTITRUST,
MONOPOLIES AND BUSINESS RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

THE ISSUE OF AIRLINE CONSUMER PROTECTION

AUGUST 10, 1987

COLUMBUS, OHIO

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CONTENTS

OPENING STATEMENT

Page

Metzenbaum, Hon. Howard M. (chairman of the subcommittee) 1

CHRONOLOGICAL LIST OF WITNESSES

Panel consisting of: Douglas M. Kennedy of Lane, Alton & Horst, Columbus, OH; Judy Hirsh, Cincinnati, OH; Michael X. Burrell, president, All Supplies, Inc., Columbus, OH; and Joanne McHugh, vice president and general manager, Peoples Travel Service, Inc., Columbus, OH 3

Panel consisting of Matthew V. Scocozza, Assistant Secretary for Policy and International Affairs, Department of Transportation, and Richard J. Fahy, Jr., associate general counsel, American Airlines, Inc 13

ALPHABETICAL LISTING AND MATERIAL SUBMITTED

Burrell, Michael X.: Testimony 7

Fahy, Richard J.:

Testimony 21

Prepared statement 28

Hirsh, Judy: Testimony 5

Kennedy, Douglas M.: Testimony 3

McHugh, Joanne: Testimony 8

Scocozza, Matthew V.: Testimony 13

PROBLEMS IN THE AIRLINE INDUSTRY

MONDAY, AUGUST 10, 1987

U.S. SENATE,
SUBCOMMITTEE ON ANTITRUST,
MONOPOLIES AND BUSINESS RIGHTS,
COMMITTEE ON THE JUDICIARY,
Columbus, OH.

The subcommittee met, pursuant to notice, at 9 a.m., Port Columbus Airport, Columbus, Ohio, Sen. Howard M. Metzenbaum, chairman, presiding.

Staff present: Ellen M. Bloom, legislative assistant.

OPENING STATEMENT OF SENATOR HOWARD M. METZENBAUM

Senator METZENBAUM. Good morning. With the Senate in its summer recess, I've decided to bring my judiciary subcommittee home to Ohio today. Considering the subject matter before us, we are in a much more appropriate hearing setting than a Washington hearing room.

We're here to discuss the explosion in airline travel problems and to talk about the ways we might improve a truly sorry situation. Not long ago, flying used to be an efficient, pleasant, reliable, even exciting way to travel. Today, it's still exciting, but for all the wrong reasons.

It is like playing a roulette wheel. Call it the "Wheel of Misfortune." Long delays. Flight cancellations. Overbookings. Reroutings. Lost luggage. Near misses.

If you, and your baggage, do manage to arrive at your destination on schedule, chances are you won't be so lucky on your flight back. Consumer complaints about the airlines seem to be the only thing taking off these days. According to the Department of Transportation, complaints in June of 1987 were nearly six times higher than for the same months last year.

Look at these figures [indicating]. Here are the delays and cancellations. Consumer complaints—291 last year, 2,175 this year. Baggage problems—196 last year, 1,098 this year. Refund problems—145 up to 501. And customer service, 74 up to 440.

Something is wrong. And I might say in putting together the list of witnesses for today, our problem was in trying to decide which ones. There were so many willing to testify, that we did not have the time today that would permit us to do so.

Since I introduced my airline consumer rights bill in March, I've received stacks of angry complaints about the airlines.

I'll quote from just a few:

WESTLAKE, OHIO.—* * * It was announced that the flight was overbooked and that we would have to wait for a later flight. Among the questions shouted to the desk was, "how overbooked is this flight?" * * * The answer was, approximately 70 passengers. There was a second flight to Cleveland about 2 hours later, and many people were hoping to catch this one, until it was announced this flight was overbooked by 50 people * * *

TOLEDO, OHIO.—I recently had a business trip from Toledo to Colorado Springs. The round-trip ticket cost $278. Due to sudden illness, I was forced to return 1 day early on my doctor's advice. In doing so, I had to pay $360 for a one-way ticket * * *

MAPLE HEIGHTS, OHIO.—Northwest Airlines lost my son's dog for approximately 19 hours * * * They acted as if this poor animal was just another piece of baggage.

TAMPA, FLORIDA.—Dear Senator Metzenbaum * * * The enclosed material details a situation where Continental had lost my 9-year-old child flying unaccompanied from Tulsa to Tampa.

That's right. Lost child. Hard to believe a lost child. This father sent me a 22-page letter detailing a parent's worst nightmare.

And another letter from Cincinnati.

I wish to add my displeasure to the complaints you must be receiving from businessmen. Here are some examples of totally unreasonable fares that business people are subjected to: Cincinnati to Atlanta, round trip, $460; Cincinnati to Detroit, round trip, $338; Cincinnati to Chicago, round trip, $436.

No supersavers here.

Here's a short letter that I received from a Cleveland lawyer with an enclosure that tells the whole story. Here is the luggage handle he sent with his letter [indicating]. Obviously, the bag is back there at home.

I could go on all day.

When the airlines deregulated in 1978, many of us hoped that everyone would win. Competitive forces could force ticket prices down and quality up. It didn't work out that way.

Stronger airlines gobbled up competitors through bankruptcies and mergers, while the Department of Transportation stood by and watched. Merger mania's result? Nine airlines in this entire great country of ours control 94 percent of the market. Routes have been abandoned. Fares manipulated. Passengers treated with indifference. Confusion and chaos rule.

Since the 1981 firing of 11,000 seasoned air traffic controllers, flight delays and near misses are breaking all records.

Let me give you an idea of what I'm saying. This is a computer printout of the near misses in a 6-month period [indicating]. Near misses. All of those are near misses. And there's probably 60, 70 names on each one of these pages. Near misses. Isn't it unbelievable that there are not more crashes, calamities occurring?

Enough is enough. Something has got to be done. If the airlines can't shape themselves up, then we'll have to help them.

I believe in the free enterprise system. I believe in keeping the nose of the government out of the business. But when that business has the right to fly and is flying across the country carrying passengers and endangering their lives and failing to give the kind of service the people in this country are entitled to, then we've got to do something about it.

I introduced "The Airline Competition Act." It has passed the Judiciary Committee. It would strip DOT of jurisdiction over mergers and put that jurisdiction into the Department of Justice. Maybe

then, the airline you buy the ticket on won't be taken over by the time you take your flight.

I've also introduced "The Airline Consumer Bill of Rights." This would force the Secretary of Transportation to prohibit the abrupt cancellation of flights for purely economic reasons. It'll force airlines that advertise low fares to have at least one-third of their seats available at those fares.

Is that too much to ask?

What kind of phony advertising is it that permits an airline to run a big full-page ad in the newspaper for some very low rate; and then when you call, they say there are no seats available. And you find out only 5 percent of their seats are available at that price.

That is a way to rip off people. Business shouldn't be conducted that way. One-third of their seats should be available at the rates they are advertising them.

The bill also creates a 24-hour toll-free hotline to handle consumer complaints. Best of all, every month, at every airport, every airline's record would be posted for all to see. Maybe we can shame the airlines into improving their operations.

Today we will hear from the Department of Transportation, American Airlines, a local travel agency, and also a few passengers with the airlines.

As I said before, we could have had dozens of passengers testify today. As matter of fact, if I wanted more to testify, all I would have to do is go out to the terminal and ride up the escalator. I would come back probably with a dozen or more ready, willing, and able to testify. I'm sure they can give us an accurate picture of the situation.

Mr. Douglas Kennedy is our first witness.

I think I will just ask the entire panel to come up.

Douglas Kennedy, Michael Burrell, Judy Hirsh, and Joanne McHugh.

Because of my tight time limit, I have to leave at 11:10. I suppose it's reasonable for me to assume the plane will be late. But just because I'm going to be on it, it will be on time. Try to confine your remarks to about 5 minutes.

Mr. Kennedy.

TESTIMONY OF A PANEL CONSISTING OF: DOUGLAS M. KENNEDY OF LANE, ALTON & HORST, COLUMBUS, OH; JUDY HIRSH, CINCINNATI, OH; MICHAEL X. BURRELL, PRESIDENT, ALL SUPPLIES, INC., COLUMBUS, OH; AND JOANNE McHUGH, VICE PRESIDENT AND GENERAL MANAGER, PEOPLES TRAVEL SERVICE, INC., COLUMBUS, OH

Mr. KENNEDY. Thank you, Senator. I recently wrote a letter detailing my trials and tribulations on U.S. Air on a trip I took early in July. My wife and I made the reservations to Boston way back in April—round trip—to go to Cape Cod for vacation.

On Friday we took the 7:30 flight thinking we would have no trouble leaving that early. Right before we were ready to board, we were told the flight crew got in late that evening and couldn't leave on time. Another flight from Pittsburgh was bringing another crew. It would be approximately 45 minutes.

While we cooled our heels in the airport, the plane landed. And then they decided we could get on the plane and go. We were supposed to stop in Philadelphia but since we were delayed, a gate was not available, and we waited in Philadelphia another half-hour, and arrived in Boston 2 hours late. We missed the flight from Boston to Hyannis. To my surprise, P.B.A. had another flight and got us down to Hyannis. But our bags were lost in the shuffle.

The Columbus agent put P.I. on our bags. "P.I." which means Piedmont. He should have put P.T. "P.T." means Provincetown, Boston. Which, by the way, Provincetown, Boston delivered them. So, I would like to commend them on their service on the trip back.

Some 2 weeks later, we were scheduled to leave the airport in Boston on the 6 o'clock flight to Columbus and arrive in Columbus about 9 o'clock. When we got to the airport, we were only to find that when we looked at the screen, the flight had been canceled. Of course, no reason given. So, we are what, I believe, in line with 100 other passengers waiting for another flight.

They finally instituted just a line for the people waiting to go to Columbus. I'm not sure which flight it was, but there was another flight that left to Columbus. That could have gotten us there. But, of course, our line didn't start until after that flight left. The only way to get from Boston to Atlanta to Columbus was to catch another flight, which would bring us to Columbus at 1 a.m.

My wife was at the time, and still is, pregnant. At the time, she was 7½ months pregnant. I didn't think it was a good idea for us to travel that late. So, I asked if they could put us up for the evening. They decided maybe they could check on that. The person I asked walked around the back and wandered around. We finally found there were no flights the next morning because they were all full. So, unfortunately, we decided to take that flight.

I thought about my baggage because I wanted to make sure our baggage got on the plane. They said, "Your baggage is in the claim area." I asked if they could put a ticket on it. They said, "No, you have to pick it up." We had four bags. Obviously, I can't carry everything, with my wife being pregnant. They said, "Sorry." I went downstairs and got our baggage and lugged it on the shuttle bus, went around to two terminals with about 15 minutes to spare. Here I am sprinting in the airport with all my bags.

We were just treated very poorly, given no explanations. The people were rude. And I just thought it was unconscionable that these people take your money for 3 months—you have to buy your tickets ahead of time—reconfirm your plane schedule, and then cancel your flight.

I deal in situations every day where people bargain for services. I do not think it is unreasonable to get there reasonably on time. I'm not saying flights shouldn't be canceled, but these were beautiful days.

Furthermore, I believe if the flight is more than an hour or so late, you should get your money back. Maybe then, they would schedule things more competitively.

Senator METZENBAUM. Your business, sir?

Mr. KENNEDY. I'm an attorney, sir.

Senator METZENBAUM. What airlines were you flying?

Mr. KENNEDY. U.S. Air both ways. For the most part, we've had decent service. But this time, I felt it was totally unreasonable, and it caused me to take pen in hand and write you a letter.

Senator METZENBAUM. Pleased to hear from you. I hope tomorrow's situation is better than yesterday, and also hope your baby will be healthy. Howard Morton is a nice name.

Mr. KENNEDY. Thank you.

Senator METZENBAUM. The next witness is Judy Hirsh.

STATEMENT OF JUDY HIRSH

Ms. HIRSH. Good morning. Thank you.

Senator METZENBAUM. Bring that mike closer.

Ms. HIRSH. Better?

Senator METZENBAUM. Yes.

Ms. HIRSH. I'm here today because I was on one of Delta's near misses, June 30th to Los Angeles from Cincinnati, that almost landed in the Pacific Ocean.

Very obviously, about a minute after takeoff, the plane lost all power. The flight attendant told us we needed to evacuate the plane. We were told to get out our safety instruction card and put on our life vest. It was like, "Good luck."

Well, thank God, about 10 seconds before crashing into the ocean, the power returned. The pilot said human error caused the loss of power, nothing was wrong with the plane. And we flew on to Cincinnāti.

This was rather disturbing. The plane could have easily gone back to Los Angeles to be checked or for a change of flight crew.

It was not until I got home I found out that the pilot accidently turned off both engines. This was a terrifying experience. And I think this made me angry. It made me realize how poorly prepared airlines are. I don't mean to single out Delta airlines. I think what I have to say applies to all airlines.

I would like to outline two safety problems I observed: First, I saw that the safety instructions and equipment were really inadequate. The flight attendant never told us how to put on our life vests, or how to sit in a specific way to protect ourselves and exit the plane. Certainly there was not a lot of time, but enough to cover this.

Senator METZENBAUM. Did they tell you before the flight took off how to put on the life jacket?

Ms. HIRSH. No, they didn't. And also, I didn't have a safety instruction card. And I found out there were other people who also didn't have instruction cards with them. So, I was fending on my own.

I found that the life vests were really useless in an emergency. You put them over your head—it is a very complicated piece of equipment. Lots of things to tie and secure. The instructions, believe it or not, are located on the back. Needless to say, they are not any help.

I consider myself to be fairly intelligent. I have flown quite extensively. I was very frightened, very insecure.

The airlines need to provide foolproof safety vests and instructions on what to do in a near crash. And yet, I know it would have

taken me several minutes to read and figure out how to operate a safety vest.

The second problem: I don't think the airlines are prepared to protect the safety of babies and children. This really hit me when I heard a women scream. She didn't have a safety vest for her baby. Fortunately, another passenger found one under a vacant seat.

What would have happened if there was no vacant seat? I found out there were extra safety vests in the airplane; however, in this emergency, nobody was available to help her.

Perhaps even more important, the safety vests are designed for adults, certainly not babies and young children.

I'm a mother of a 1-year-old and a 4-year-old. It scares me to death to think what would have happened if I had my children on that flight. I wouldn't have been able to protect them. I would have been helpless.

I'm not an expert on emergency equipment. My understanding is there is specifically designed water safety equipment for babies and young children, but the airlines chose not to make them available for young children and babies.

Perhaps, some of the comments I'm making maybe seem a little harsh.

Senator METZENBAUM. Quite the contrary.

Ms. HIRSH. My real concern here is we came so close to crashing. I'm concerned the FAA and the airlines industry have ignored this because there were no deaths. I look at this as stimulus to tighten up safety controls.

I'm from Cincinnati. And it was a couple of years ago that an Air Canada plane caught on fire and landed. And 23 people died as a result of that tragedy.

Now aircrafts are required to have smoke detectors and flame-retardant seats.

Is a plane really going to have to crash in the Pacific Ocean before something is done? I hope the answer is no.

I came here this morning more than to air my grievances. I hope to convince you to put pressure on the airline industry, and make it a lot safer.

Senator METZENBAUM. I've already spoken with my staff on the subject. We will follow up on this whole question of things that they give you to wear around your shoulders. The failure to have any for children is shocking to me. I am a father and grandfather of five grandchildren. That upsets me.

Let me ask you a question.

Ms. HIRSH. Sure.

Senator METZENBAUM. It was human error?

Ms. HIRSH. Right.

Senator METZENBAUM. Do you know what happened to the pilot who turned off the electronic switches instead of just using the manually controlled switch?

Ms. HIRSH. I knew Delta suspended him and I heard FAA revoked his license. I don't know if that is temporary.

Senator METZENBAUM. I'm not sure they revoked his license. But what they did is they revoked his license to fly as captain, but he can fly as copilot and flight engineer.

Ms. HIRSH. Not very reassuring.

Senator METZENBAUM. This is an instance in which he failed to notify the copilot of what had transpired. Rather interesting commentary. Here's a man who endangered the lives of how many of you?

Ms. HIRSH. Over 200 passengers were on the plane.

Senator METZENBAUM. Over 200. And what's going to happen to him? Is he going to be suspended for 1 year? I guess he's going to be demoted from being a captain so he can be cocaptain and be a flight engineer.

Ms. HIRSH. I hope I'm not on one of his planes.

Senator METZENBAUM. There are 11,000 traffic control people who were in a position to protect the lives of people flying throughout this country. What happened to them is far more serious than going on strike illegally. They paid their penalty. And I must say, this Senator takes strong issues in the Department of Transportation. Those men and women are entitled to come back to work.

When you commit a crime in this country, you pay the penalty. But for the balance of their lives, they are being punished.

Here's a man who endangered over 200 lives, and he just gets a demotion. I am very much disturbed about it, and wish I could do something both in respect to him and the flight traffic controllers.

Thank you very much.

Ms. HIRSH. Thank you.

Senator METZENBAUM. The next witness is Michael Burrell. Mike, tell us your story.

STATEMENT OF MICHAEL X. BURRELL

Mr. BURRELL. I'm here to prove that April Fool's is still alive and well. On April 1, I flew to——

Senator METZENBAUM. Can't hear you. Bring the mike closer.

Mr. BURRELL. Hello. Can you hear me?

Senator METZENBAUM. OK.

Mr. BURRELL. On April 1, I was on my way to a business trip in Norfolk, VA. My luggage got off at Newark, NJ, and I proceeded on to Norfolk.

As I arrived, a gentleman from Continental Airlines said that, "I think your luggage is still in Newark." "Well," I responded, "I have got to get my luggage. I'm here on a business trip. I'm meeting with over 90 people here in town." I said, "If you can find it, get it on the next flight, please."

The man said, "We'll do what we can." I asked, "May I speak with your supervisor?" I spoke to her, and she said there were no more flights out of Newark tonight. I said, "I've got to have it tonight or at least early in the morning." I said, "Would you please have someone take it over to the bus company, and have them bus it in at least? I'll have it by 9 a.m. the next morning."

Well, they sent me on to my room. And about an hour later, they called and said they couldn't bus the luggage, just couldn't do it. I said, "When will it get here?" They said, "The first airplane from Newark at 11."

Well, at 1:30 I started calling again. "Where is my luggage?" Continental said, "Well, it wasn't on that first plane, but it will be

on the second plane." At 2, I called. And they said, "We're sending it over by cab."

This conference was going to conclude at 4. I could not get my clothes pressed to go to this meeting. I had no business cards, no brochures to hand out to those companies.

I said, "I've got to go over and get some information." When I arrived back at the hotel, my luggage—my one piece of luggage was there; my briefcase was not.

I went back to the airport because I was flying back out. I said, "Where is it? The last flight you indicated you had both pieces." They responded, "Well, we don't know." I said, "I have my business cards in there. I have my credit cards in there. Should I start calling to cancel these credit cards?" "Oh, no. It is not considered lost until it's missing 48 hours."

I arrived back in Columbus and got on the phone again to Continental. They asked me if I had filled out their little blue form. I did that and mailed it. I said, "Well, this was April 1, and I had not heard from them."

I called on, I believe, around July 1. I said, "Look, it's been 90 days. Don't you think I should have my briefcase or at least a settlement?" They said, "We'll have to send you another form," which arrived 15 days later, that I still have. I am not going to fill out this paper. I am going to send it to them and tell them they have x number of days to make a settlement, or I will look for this gentleman next door here [indicating].

Senator METZENBAUM. He costs money; we don't. Be in touch with Ellen [indicating], and we'll get you some results.

Mr. BURRELL. I also still have their wonderful little check for $7.00 for my incidentals.

Senator METZENBAUM. Mr. Burrell, let me tell you, one U.S. Senator went to the counter recently at one of the airlines and said, "I've got my bags here, and I want to send one to Honolulu; Chicago; New York City; Tampa, FL." He said, "Can't do that." He said, "The hell you can't. You did it last week."

Thank you very much, Mr. Burrell.

Mr. BURRELL. Thank you.

Senator METZENBAUM. I'm showing [indicating] a little cartoon where one business executive is speaking to another. "This trip is so important, you'll have to take the bus. There won't be time enough to fly." Luckily we keep our good humor.

Joanne McHugh.

STATEMENT OF JOANNE McHUGH

Ms. MCHUGH. Mr. Chairman, I'm Joanne McHugh, vice president and general manager of Peoples Travel Service of Columbus, OH. I am a member of the American Society of Travel Agents, and have also served on the Chamber of Commerce's Aviation Committee. Accompanying me here today is Carl Bryant, president of Mid-America Chapter of ASTA.

Thank you for the opportunity to address the issue of airline consumer protection. ASTA is the world's largest association of travel professionals with 22,000 members in 128 countries representing approximately 11,000 travel agents in the United States.

We applaud your initiative, Senator Metzenbaum, in introducing Senate bill 885. The provisions of this bill concerning advertising, cancellations and disclosure of airline performance are forthright steps toward ensuring a high quality of air transportation in America.

However, ASTA believes that the volatility of a deregulated airline industry warrants further protection for consumers. The most critical areas of concern are: A plan to safeguard ticketed passengers in the event of an airline bankruptcy; and the elimination of unfair trade practices with respect to airline computer reservation systems.

ASTA's commitment to airline consumer protection dates back to the inception of deregulation. It became clear early on that the financial risks of a competitive airline market would expose consumers to substantial monetary losses with no effective recourse. This fact has been brought home every time an airline has declared bankruptcy. The most recent example of a major carrier was Frontier Airlines, which declared bankruptcy just last year.

ASTA's concern arose from fundamental beliefs about the nature and purpose of the national air transaction system: air travel is vital to the functioning of the national economy; air service is, like the telephone, relied upon for business and personal use alike as a necessary service, not merely an optional convenience or luxury; and given its unique purpose and global scope, the air transportation system must, in some respects, be treated differently than more ordinary goods and services in commerce.

At the outset of deregulation, it appeared that ASTA's concerns for consumer protection were shared by the airlines. Working with the Air Traffic Conference, ASTA, persuaded the airlines to develop a Default Protection Plan and submit it to the Civil Aeronautics Board for approval.

Approved in early 1982, the plan aimed to protect consumers holding tickets for travel on airlines which go bankrupt. The plan was applied more or less successfully in three airline bankruptcies, most notably in the case of Braniff.

However, competitive forces quickly eroded airline support for the plan. Scarcely half a year after the plan's approval, Continental Airlines filed for bankruptcy but did not completely suspend service. Subsequently, the airlines participating in the plan determined that it did not apply to the Continental situation, and aggrieved consumers were left without compensation. The CAB ruled that the decision not to apply to the plan had been improper, and eleven airlines dropped out of the plan within 2 weeks.

ASTA responded with legislative proposals, but was spurned by all but one of the major airlines, who persuaded congressional leaders that it was inconsistent with theory of deregulation for financially sound carriers to be supporting unsound ones. Meanwhile, consumer losses from airline bankruptcies continued to mount: from February 1982 to February 1986, 37 carriers failed including ten substantial carriers operating jet equipment in major markets.

In August 1986, Frontier Airlines ceased operations and filed for bankruptcy leaving ticketed passengers stranded and uncompensated. One glaring instance of the problems this caused was related by Missouri State Representative Flavel J. Butts. The Butts and four

other families had been rushed into purchasing Frontier tickets by a rumored price hike. Representative Butts believes the rumor was a ploy by Frontier's parent company, People's Express, to maximize its cash before filing for bankruptcy. These unfortunate families lost $5,450, which has yet to be reimbursed. A copy of Representative Butts' letter is attached to this statement.

Clearly there is a need for consumer protection from airline defaults. ASTA urges Congress to address this problem with legislation providing stranded passengers with an immediate alternative for air transportation as well as the option of timely reimbursement.

Competitive pressures in the deregulated airline industry have placed consumers at risk in other ways. In addition to the problems of advertising, cancellations and scheduling addressed by Senate bill 885, competitive air fares have acclimated the consumer to the idea of drastically reduced travel costs. Low prices can never be considered an evil in themselves. But now consumers all across America are preyed upon by travel scammers who capitalize on the increasing demand for inexpensive travel.

ASTA has held two conferences to examine the expansion of travel scams. By creating a form for those in government and the private sector, ASTA hopes to disseminate information, foster discussion and generate solutions. Since ASTA has no authority over these scam operators, we encourage those at various levels of government to coordinate their efforts toward more aggressive prosecution.

The last issue I would like to discuss threatens consumers in a less visible, and therefore more insidious manner. One result of deregulation has been an exponential increase in the complexity of fares and flights, making computerization essential to the sale of travel. It is only natural that the major airlines have become the vendors of these Computerized Reservation Systems (CRS's). But it is ironic that in an era of deregulation, the airlines have been able to acquire an anticompetitive hold on this lucrative business.

Travel agents contract with the CRS vendors for access to their systems. CRS contracts usually lock agencies in for 5 years, making it virtually impossible for the agency to terminate its contract with a view toward acquiring a better system from another vendor. If the travel agency wishes to add additional equipment later on, which is inevitable in a growing business, the CRS vendor may require the contract to be extended for another 5 years. This cycle can proceed indefinitely each time any new equipment is added.

If an agency tries to terminate its contract, the CRS vendor seeks to recover its liquidated-damages. These damages are not limited to the agency's obligation for the unexpired term of the contract and the cost of removing equipment. The CRS vendor will often sue to collect the projected profit, which would have been generated by booking fees, had the contract come to full term.

Senator METZENBAUM. I would like to just interrupt you for a minute. American Airlines was in my office the other day and agreed to voluntarily change the projected options of those contracts that provided that the cost termination would be placed only on the actual damages.

In other words, they claim it costs money to install the equipment and take it out. They've also agreed that you wouldn't have to go to court, to make that determination and spend a lot of money on lawyers, and because they would be willing to arbitrate the issue. Do you think that would be a good idea?

Ms. McHUGH. Yes, certainly, but more than just American Airlines.

Senator METZENBAUM. Isn't that a combination of American and United?

Ms. McHUGH. They are most prominent, but most of the carriers have their systems in agencies.

Senator METZENBAUM. All with the liquidated-damages provision?

Ms. McHUGH. Yes.

Senator METZENBAUM. If they don't do it voluntarily, then I believe Congress would be inclined to act on this presently pending amendment. I would hope to get them to do it voluntarily, and we may seek to achieve that objective. Do you feel that is a much better result?

Ms. McHUGH. Yes.

Senator METZENBAUM. Please continue.

Ms. McHUGH. Liquidated damages are often grossly overstated by the vendor, are unrelated to actual costs related to the use of the system, and serve the primary function of making the contract too expensive to terminate. The result is that travel agencies are held prisoner indefinitely, unable to take advantage of innovations or superior performance by the rival vendors. And the traveler is unwittingly stuck with the inefficiencies of an uncompetitive CRS market.

These two practices: making the provision of additional CRS equipment upon an extension of the contract; and, demanding unreasonable and excessive liquidated damages upon termination of a CRS contract, constitute unfair trade practices and should be prohibited by law.

In conclusion, ASTA believes that any legislation seeking to protect airline consumers must include the following provisions: (1) A plan to protect consumers' tickets issued by a bankrupt airline including passenger carriage as well as the option for a refund; and (2) The elimination of unfair trade practices with respect to airline computer reservation systems.

Both of these provisions now appear in detail in the amended House bill 3051 offered by Congressman Norman Mineta, chairman of the House Aviation Subcommittee, and passed August 4, 1987, by full House Committee on Public Works and Transportation.

ASTA asks you, Senator Metzenbaum, to take the lead on this important issue in the Senate. We ask that you amend Senate bill 885 to include these provisions. Furthermore, we ask that you offer these amendments on the Senate floor to Senator Wendell Ford's Senate Airline Passenger Protection Bill, S. 1485, which has passed the Senate Committee on Commerce, Science and Transportation and is awaiting a floor vote.

This concludes my statement. And I would be delighted to respond to any of your questions.

Senator METZENBAUM. Thank you very much. Let me ask you a question about the provision that had been agreed upon in early 1982 to protect consumers holding tickets. What was that agreement?

Ms. MCHUGH. An agreement whereby another carrier would carry those passengers if the airline went bankrupt.

Senator METZENBAUM. I intend to look into that matter and see if we can't do it by law or get the Department of Transportation to issue a regulation with respect to issue rights to computer reservation systems which, indirectly, are a burden on the consumer.

As I said to you, American Airlines agreed to change their system. And I will see if we can't prevail upon the other airlines to do likewise. If not, we'll do with the legislative route.

Let's talk about some other airline problems that have affected your business.

Ms. MCHUGH. I think today the creditibility of the travel agent is questioned. We issue boarding passes for our travelers. They arrive at the airport, they board and several people are holding the same seat. And it's the travel agency that is blamed. We use the airline reservation system and in turn, we get approval from the carrier that the seat is available. We don't automatically assign that seat. Penalties on airline tickets are waived by calling the airline direct. If you go to the agency, we have to apply the penalties. If the passenger is a frequent flyer and gives his frequent flyer number to the carrier, the penalties are waived. Yet, they think the travel agent is unable to help them anymore, because we must enforce the penalties.

The fares: there are no consistencies. A fare from Columbus to Chicago is $449, yet there is a round-trip Super Saver half that fare. But our travelers are very intelligent and they know the fare prices.

Senator METZENBAUM. I remember once flying up from Florida to Washington, and there were people on the same flight that were flying to Cleveland. The flight stopped in Washington and then went on to Cleveland. Their fare from Florida to Cleveland was $98. My fare for going three-fifths of the difference was about $220. It is sort of an absurdity.

Thank you very much. We appreciate your testimony. I am concerned about the problems to which you addressed yourself. And you may be certain this Senator will be heard from further.

Thank you.

I would like to thank all the witnesses. You all have been extremely helpful. This subject is not just a matter of having a hearing. We have the Airline Consumers Rights Bill on the floor, and we are working with Senator Wendell Ford. He is chairman of the committee. So, it is understandable that his bills come on the floor rather than mine. I intend to offer some amendments to protect the consumers with respect to the problems you mentioned. We will follow up with the Department of Transportation as well as the airlines.

I share your concerns with respect to your luggage loss. I'm carrying mine on the plane when I go back today.

With respect to the problems you mentioned, it had to be a tremendous source of frustration. My own daughter was pregnant and

had rather similar circumstances with one of the airlines. And I must say, they were absolutely indifferent to her concerns. When they learned she was my daughter, it became a little different. And that's not the way it should be; I'm first to say.

Thank you all for appearing.

Our next panel witnesses are Matthew Scocozza, Assistant Secretary for Policy and International Affairs, Department of Transportation, and Mr. Richard J. Fahy, associate general counsel, American Airlines.

I'm happy to have you with us. I want to say the airlines aren't the only ones who have problems. The P.A. system is not working too well this morning, so we ask you to speak very loudly so you can be heard. What about the gentlemen from the media, are you picking this up adequately?

[All the news media personnel said "Fine."]

Senator METZENBAUM. Great. Thank you very much.

Mr. Scocozza, happy to have you with us this morning. Nice to see you. The last time you appeared, I think, had to do with Piedmont?

Mr. SCOCOZZA. Yes, we did have a conversation about that. Of course, it is still pending, and I'm still not able to talk about the merits.

Senator METZENBAUM. I'm not asking, just refreshing your recollection of your appearance. And whatever your decision is, that is your decision.

Please proceed, Mr. Scocozza.

Mr. SCOCOZZA. Mr. Chairman, I have a brief statement. It takes about 6 minutes.

Senator METZENBAUM. Fine.

TESTIMONY OF A PANEL CONSISTING OF MATTHEW V. SCOCOZZA, ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS, DEPARTMENT OF TRANSPORTATION, AND RICHARD J. FAHY, JR., ASSOCIATE GENERAL COUNSEL, AMERICAN AIRLINES, INC.

Mr. SCOCOZZA. As I begin, I think it is vital to acknowledge at the outset, that since early 1986, the structure of the U.S. aviation industry has changed dramatically, due to both the tremendous growth in air travel and the number of airline mergers and acquisitions. These changes caused a lot of stress and strain and resulted in substantial problems for air travelers. Certainly, the carriers should have been more astute in anticipating the advent of these problems and better prepared and responsible in handling them.

As evidence of the severity of these problems, consumer complaints coming to the Department of Transportation have risen dramatically over the past 18 months. However, caution must be exercised when interpreting the Department's complaint numbers, as most complaints are made directly to the airlines rather than to the Department of Transportation. And therefore, the Department of Transportation's complaint records are not necessarily representative of the true pattern or volume of consumer problems. In addition, some portion of the increased complaints we have received are due to the increased publicizing of the Department of

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Transportation's consumer complaint phone number. Finally, there is usually a considerable lag between the time when the problem occurs and the consumer contacts the Department. Therefore, the most recent consumer complaint numbers do not necessarily reflect the actual level of current problems.

It is clear, though, that travelers have experienced undue problems, and that the vast majority of these problems stem from airline delays. Thus, I would like to concentrate first on the delay issue. Why delays occur and how the Department is responding to the problem. Then, I would like to address our efforts to get carriers to improve their handling of consumer problems.

A few statistics on the number of delays are helpful in understanding the extent of the problem. At 22 major airports, there were 367,000 delays recorded by the FAA in 1986, compared to 295,000 during 1985; a 25-percent increase. During the first 6 months of 1987, there were 162,770 delays. These numbers do not include all delays since they are measured from the time the pilot requests clearance to take off. The total number of delays is substantially higher.

In our preliminary examination of the information on delays, we found that although an estimated 65 to 70 percent of the delays were weather-related, many of the remaining delays appeared to be the result of airlines scheduling more operations at peak hours than the airports could handle, even in good weather. For example, we found that at Atlanta between 3:45 and 4 in the afternoon, airlines scheduled 50 landings and departures, although the airport is only capable of accommodating less than 40 operations during a 15-minute interval under common weather conditions. In response to this, we have taken a number of steps, both formally and informally, to get carriers to provide more realistic schedules.

Early this year, the Department proposed that the airlines hold discussions to "smooth out" their schedules at airports where the carriers had more operations during certain times than the airports could handle. As a result of the scheduling discussions, most major airlines at five airports—Newark, Philadelphia, O'Hare, Atlanta and Dallas-Ft. Worth—made significant adjustments to their schedule this spring, before the peak summer season. While there are still serious delay problems at these airports, we believe that these voluntary efforts by the carriers have helped to keep the situation from becoming even worse.

In June, the Department issued a notice of proposed rulemaking on various regulatory and nonregulatory proposals to address the delay problem. One of the regulatory responses suggested in the notice is the imposition of a disclosure rule requiring carriers to provide data on their on-time performance by market and/or flight. Proponents of such a rule contend that carrier disclosure of on-time information would enable consumers to choose flights based on quality of service factors as well as price. Another regulatory response under consideration is a rule establishing minimum on-time performance standards that airlines would be required to achieve. A third suggestion in our notice is the establishment of a rule governing the use of elapsed flight times in ranking flights in computer reservation system (CRS) displays.

Senator METZENBAUM. Would you just repeat those again?

Mr. SCOCOZZA. The three items: Disclosure of on-time performance, establishment of on-time performance standards, and elimination of elapsed time in computer reservation system displays.

Senator METZENBAUM. Mr. Scocozza, I don't want to force you to finish in 6 minutes. I understand if you need more time. I know that you are trying to stay within your 6 minutes.

Mr. SCOCOZZA. I could just slow down.

Other options addressed in the notice are the imposition of peak-hour congestion fees by the FAA or airports or voluntary efforts to encourage peak-hour pricing.

We received extensive comments to the notice and are currently reviewing them. The comments underscore the complexity of the issue and the need for a well-thought-out approach to the problem. Once all of the views and positions are carefully considered, we will issue our decision on the rulemaking proposals, taking whatever action is appropriate.

As I indicated earlier, we have been simultaneously working on an informal basis to secure carrier cooperation in addressing some of these problem areas. I am pleased to report that just recently Secretary Dole announced that we had obtained agreement from CRS vendors to eliminate elapsed flight times as a factor in ranking the display of nonstop flights. We are optimistic that this change will result in more realistic scheduled flight times, which should significantly help to reduce delays.

Carriers have volunteered other improvements as well. American Airlines, for example, announced it was correcting its elapsed flight times to be more realistic. Also, 13 large airlines proposed to create a voluntary system of delay reports for the public. However, even though we feel that the carriers have been making progress, we are continuing our investigation efforts and are prepared to take enforcement actions against individual carriers where warranted.

In January, Secretary Dole announced the beginning of a series of investigations covering airline scheduling practices at the most delay-prone airports in the United States. In our first airport scheduling investigation—covering Atlanta—the Department found a high level of discrepancies between the schedules published by Delta and Eastern Airlines and the actual operating times of these carriers. In April, we issued a show-cause order summarizing the results of our investigation and tentatively concluding that Delta and Eastern may have violated section 411 of the Federal Aviation Act by engaging in unrealistic scheduling practices. Comments and answers to the show-cause order have been filed and the Department is on the verge of deciding on how to proceed.

Since it was unlikely that such scheduling discrepancies were limited to Atlanta, we commenced investigations of airline scheduling at three additional facilities experiencing a high number of delays: Chicago O'Hare, Boston Logan, and Dallas-Ft. Worth. We have received an extensive amount of data on flights to and from these airports and have been evaluating it. As with the Atlanta investigation, we are prepared to take whatever action is warranted based on our review of the information, and to initiate additional investigations as appropriate.

The information gathered in these investigations has been extremely helpful, not only for enforcement purposes, but also in considering rulemaking or other administrative actions.

Mr. Chairman, as you know, the argument is often advanced that the best way to eliminate delays is to expand airport and airway capacity. We would like to point out that we have been moving aggressively to do just that.

Senator METZENBAUM. What is the time schedule with respect to show cause? In other words, where we can talk about something happening within a month, 6 months, a year.

Mr. SCOCOZZA. I hope it is less than a month; hopefully, within the next week or 10 days.

Senator METZENBAUM. Great.

Mr. SCOCOZZA. Because the Department of Transportation has been unfairly and incorrectly accused of not doing enough in this regard, I would like to describe the full range of our efforts:

First, in September 1985, Secretary Dole announced plans to add nearly 1,000 controllers by October 1987. She has been doing that, and the air traffic control work force is now above 15,000.

Second, we are moving ahead——

Senator METZENBAUM. Let me ask you a question, Mr. Scocozza. You don't make the policy nor does Secretary Dole. Really, what is so wrong with taking back those air traffic controllers who didn't kill anybody, didn't rape anybody, didn't mug anybody? They went on strike. How long has it been now since they have been out of work?

Mr. SCOCOZZA. Since 1981.

Senator METZENBAUM. And has the Secretary given any consideration to taking up with the President the matter of reversing his position and saying they have paid their penalty?

It's time to give them a chance to come back to work. These men and women know their work. They did something they shouldn't have done, according to the President. They went on strike. But we've had strikes all through our history. And to the best of my knowledge, nobody has ever been handed out that kind of penalty. That is, it's a penalty for life. They can't work. That is incredible. That is inhuman.

And I would like, if the Secretary at this time has not taken this up with the President, I would like to urge her to do so. But knowing the political aspects of it, I would urge if she would rather do it privately, I couldn't care less if it is publicly or privately. I just think it is indecent of us as a government.

I don't know how many of the 11,000 would want to come back. These are nice people. I've met some of these people. They are not crooks. They did something they thought was right at the time; they went on strike.

But would you take that up with the Secretary, or do you know if there have been any discussions?

Mr. SCOCOZZA. I certainly will mention to the Secretary that it is the point you raise this morning. But I feel I must honestly tell you, the issue has been addressed in the past within the administration. And I believe it is clear for a number of reasons that there is no interest in renewing that exercise. And if I could, just from an independent point of view, if this were back in 1981, Senator, I

think the position of immediately being able to hire an air traffic controller would have probably been a lot more feasible. But since 1981, our air traffic control system—technological system changed a great deal, new procedures. For instance, if an air traffic controller decides to voluntarily take another job, and he was not part of the strike, we estimate it would take over 44 weeks in retraining that individual person.

Senator METZENBAUM. How long does it take to train a new one?

Mr. SCOCOZZA. In or around 70. So, the amount of savings is not that much. One of the things we also recognize—and I'm not making an older-versus-younger comparison—but someone who is in their 20's has more potential and could be a hell of a lot more valuable to the system than someone coming back later on because the average retirement age is less than 60 years old. There is a tremendous amount of tension. With the person in his or her 20's, there is interest in career advancement after a controller has spent that much time in the system.

So, from that standpoint, if we decide to take them back on the system, I think it would probably take in excess of a year to actually put them back on. If you have one on the West Coast working in the Los Angeles control tower, and he or she wants to move into the enroute center, which is a different type of a function—they are the ones that watch the planes that are just flying over certain traffic control points necessarily in or out of air points—it would take close to a year training an experienced air traffic controller in their job.

And that's where we have a tremendous need. We have to take at least a year to make a transition into that point. A former air traffic controller would take longer.

Senator METZENBAUM. Would you tell the Secretary I would like to speak with her about that subject?

Mr. SCOCOZZA. Yes.

Senator METZENBAUM. Please proceed.

Mr. SCOCOZZA. The third item—FAA teams are reviewing air traffic procedures on an airport-by-airport basis as well as East Coast and West Coast traffic procedures in order to handle arrivals, departures, and en-route flights more efficiently.

Fourth, the Department has proposed authorizing more than $1 billion annually for airport grants, together with restructuring the airport improvement program to focus funds on capacity enhancement.

Fifth, Secretary Dole's budget request calls for an overall increase of 20 percent in funds for the aviation system.

Mr. Chairman, I think our programs represent a comprehensive and well-planned effort to increase airport and airway capacity. With that said, I think it is only prudent to note that very often capacity cannot be expanded at airports because the facility is surrounded by development and other environmental restrictions. Again, capacity management is a key to our efforts.

I would now like to address the issue of consumer complaints and what airlines are doing to handle consumer problems. A major cause of the surge in consumer problems and complaints in late 1986 and the first half of 1987 appears to be the "shaking out" of the industry in the wake of airline mergers and acquisitions. Since

last summer, almost 70 percent of the industry has been involved in consolidation activities. It shouldn't be surprising, then, that there would be at least a temporary increase in service problems and consumer complaints. We think it is likely that a major portion of the problems will be corrected as the affected airlines complete the operational side of their mergers. But we have not left that to chance, and we have been taking steps to alleviate the difficulties consumers have been experiencing in all areas.

In May, we sent an "Industry Letter" to carriers reminding them of the Department of Transportation's consumer rules and policies, particularly in those areas where we have seen more complaints.

Also, we established a special consumer task force to investigate increased consumer complaints and meet with representatives of airline management to discuss how the airlines are dealing with the problems. The task force has met with a number of carriers and plans to meet with all of the major carriers. In those discussions, we pursue with carriers their consumer policies, their employee training and staffing programs, their procedures and objectives in resolving complaints and their efforts to improve their facilities and operations to avoid the recurrence of such problems.

Some of the programs that carriers are undertaking will require time to put into place, such as installation of state-of-the-art baggage scanning machinery at airports or improved ground facilities. Other programs such as recurring training and the hiring of additional customer service representatives and ground service personnel should see more immediate results. It is clear, however, that the airlines have recognized the various passenger service areas requiring action and they are taking steps to address those areas.

Our aviation enforcement office has been investigating the consumer service practices of several major airlines. In June, Continental Airlines agreed to pay a fine of $225,000 and to cease and desist from certain consumer practices that were under enforcement investigation. We are prepared to take similar steps with other carriers if circumstances and the evidence warrant.

Finally, given the problems that have occurred for consumers when merged carriers integrate their operations, we have begun requiring carriers filing for merger approval to submit information on their plans for consolidating their operations. We want to ensure that there is sufficient advance planning so the quality of passenger services is maintained.

In a related matter, there is the issue of the Department of Transportation's responsibilities under the Federal Aviation Act which governs our review of mergers and acquisitions. As you know, the Department's antitrust authority under sections 408 and 409, and related portions of section 414, terminates on January 1, 1989. We are recommending acceleration of the sunset date to effect the immediate repeal of sections 408 and 409. In our view, there is no basis for subjecting airlines to special administrative oversight. Rather, airlines should be subject to the standards of the Clayton and Hart-Scott-Rodino Acts, which are more effective and less burdensome than those required by section 408.

Finally, one of the major recent consumer concerns regarding air transportation has been the availability of discount fares, the restrictions on those fares and the industry's advertising practices.

The Department has several effective mechanisms to protect consumers in their relationship with the air travel industry. Section 411 allows for the investigation of domestic and foreign air carriers, or ticket agents, if there is reasonable suspicion of unfair or deceptive practices.

Our aviation consumer affairs office fields complaints in many areas relating to air fares, including availability, conditions and restrictions, and failure to provide adequate information, as well as advertising practices. Complaints are handled on a casework basis with informal contact with the carriers. The Department of Transportation consumer affairs analyst contacts the air carrier and requests an explanation or justification. In those cases where the carrier has not related all of the facts to the passenger, the analyst suggests that the carrier make the requested fare available to the consumer. Almost without exception, carriers agree to our suggestion and cases are often resolved within a matter of days. Of those cases opened during 1986, 98.8 percent were closed by January 6.

The Department also monitors air transportation industry advertising independent of the consumer complaint process. The investigation division monitors ads from a wide variety of publications on a daily basis. When specific ads are identified as misleading or deceptive, investigators contact the party to alert the company to the problem and attempt to secure a modification of the ad to ensure accuracy.

Similarly, the Department exercises a responsibility to ensure that to the extent a direct air carrier, indirect air carrier, or an agent of either states a price for the service being advertised, and the ad must disclose the entire price to be paid by the consumer. Thus, we are pursuing the issue of fares and advertising disclosure in several areas.

Thank you again for asking me here today. I would be pleased to answer any questions you have.

Senator METZENBAUM. Thank you, Mr. Scocozza.

Our chart shows [indicating] in the first 6 months of this year, DOT received as many complaints as they did during the same period last year. That only counts calls and letters made directly to the DOT consumer division, not safety complaints. These are handled by FAA. These are not complaints made to the airlines or Congress. These are complaints made to you about consumer affairs and not the complaints Congress is getting and the airlines are getting?

Mr. SCOCOZZA. That's correct, sir.

Senator METZENBAUM. Let me ask you a question: Why didn't complaints about foreign airlines shoot up the way U.S. airlines did?

Mr. SCOCOZZA. I think there's been a tremendous amount of attention given, Senator, to the number of Senate hearings we've had. We've been on C-SPAN. There is a Department of Transportation to write to, and we are encouraged to with all indications of irregular practices.

Senator METZENBAUM. I guess my question is: Is there some reason that, with respect to U.S. airlines, these numbers have about tripled here, and you have maybe a 30-percent increase here [indicating]. Far, far less. And my question really is: Are the for-

eign airlines doing a better job for their customer than the American Airlines?

Mr. SCOCOZZA. If I can just give you my own personal reaction, foreign airlines provide very limited service. It basically points to when you get on Alitalia in New York, you're going to Rome and you get off. When you get on Continental or Delta, you are continuing onto New York and continuing onto Rome. So, you have more of an opportunity for something to go wrong.

With respect to that, if you look at the 14,000 complaints, I would imagine there are a tremendous number of passengers who were inconvenienced on that particular flight. For the most point, nonstop flights are the ones who have the least number of complaints, but of course there are complains in that area.

Senator METZENBAUM. It is very upsetting—the tremendous increase in complaints that has occurred makes one wonder where the breakdown has occurred. I'm really pleased the Department is going forward remaking airlines to disclose their performance records. That is a recent development. For too long, it seems to me, the Department has had a hands-off approach for the declining airline service. Is it fair to say the Department of Transportation is and will continue to be more concerned about consumers rights?

Mr. SCOCOZZA. We are very active in the problems, in that, we've done a lot of work in in-house investigation.

Senator METZENBAUM. What about DOT's responsibilities as it pertains to maintenance and whether or not some of the airlines are deferring maintenance to cut costs, or they are not training their boys adequately?

Mr. SCOCOZZA. The Department of Transportation, Mr. Chairman, in 1983 when Secretary Dole came on board, conducted 14,000 inspections that were ordered and our air inspector forces more than doubled during that time. As you notice, in 1985, 1986, substantial fines were given to a lot of carriers just to institute safety.

I would like to give you my own impression on deregulation. Carriers are clearly going to cut costs in the maintenance area just to stay alive. And this is just a case in point; in 1975 TWA was in very, very serious trouble. What option did TWA have back then? They couldn't offer supersavers. They couldn't decide, "Let's fly down to the Florida markets," because the CAB regulated TWA airlines. At that time the only cost cutting was in in-house advertising, and perhaps the opportunity to cut maintenance. I'm not suggesting they did that. That is just hypothetical.

Today, if a carrier is in financial trouble, they can trade aircraft, trade routes, go into new airports, consolidate with another carrier, change their air fares, buy a Kodak camera and get a $25 discount, those types of innovative things. There are so many things for a carrier to improve their financial standpoint than before. Therefore, maintenance cutting doesn't have to be. It is more prone to occur in regulation.

Senator METZENBAUM. What do you think about airlines publicly indicating what their maintenance records are if the public flies on their airlines? Shouldn't they have a right to know if the planes are checked out every 6,000 miles, or whether it was 3,000 the last time they were checked? Or if there was a problem with bolts or welding. What would be so terrible about that?

Mr. SCOCOZZA. Most of the information we have from a standpoint, that is available, I don't know how helpful it would be, like, elevator inspection, last inspection in October of 1986, in January of 1987. For the most part, every aircraft is on a schedule. And if an aircraft is not checked out or maintained as it is supposed to be, it is grounded.

Senator METZENBAUM. Put some pressure on the airlines. Seems to me, the President ought to put the pressure on the airlines; it might be helpful.

One of the earlier witnesses talked about the safety provisions as pertains to children and advice on how to use the safety equipment. Is it appropriate for the DOT to further examine this question? I think this woman was facing her death within 10 seconds. Makes a very strong case, particularly with respect to change. What about that?

Mr. SCOCOZZA. I enjoyed that presentation, meaning it was very helpful. It is part of an ongoing national transportation problem. We are in the process of an indepth transition. I believe we should maybe contact directly as many of the passengers on that particular flight with respect to the inadequacies and I think we will all learn from it once every point is made.

Senator METZENBAUM. I would like to point out, though, under the regulations that exist today, instructions on life vests are scheduled for over-water flights, for instance, flights from Miami to Puerto Rico.

As a matter of fact, we've had flights taking off here in Washington that landed in the Potomac and certainly when you are going out over the Atlantic or the Pacific, you only need a short period of time to meet your maker. And I would strongly urge and appreciate you to get going on this matter: by one, better information. In other words, seeing to it everybody gets the information. Two, seeing to it that such information is available when flights are taking off or landing over water, whether for short or long periods of time. And three, provisions for children.

I think the stewardesses should actually go through the plane and explain to the children, specifically a child of 6, 7, 8 years old. The child is not a stupid child. The child could learn. They speak through those microphones fast enough to drive you insane.

Thank you, Mr. Scocozza.

We will turn to our last witness, who is American Airlines associate general counsel, Mr. Richard J. Fahy. Happy to have you with us.

STATEMENT OF RICHARD J. FAHY

Mr. FAHY. Thank you. I'm associate general counsel for American Airlines. I have been the American staff attorney most heavily involved in both consumer service quality and CRS issues for several years. And recently, I have filed a petition for American for rulemaking on service quality disclosure issues and American's comments on the Department of Transportation's proposed rules.

I understand that the purpose of my testimony today is to address S. 885 and S. 1485, two bills designed to provide airline serv-

ice quality information to consumers. American certainly agrees——

Senator METZENBAUM. Could you tell us what the thrust is of that petition you filed?

Mr. FAHY. Yes, sir. I have it in my written statement. I will summarize as we go along.

Senator METZENBAUM. OK.

Mr. FAHY [continuing]. That immediate action is required to insure that consumers have better information about the quality of airline service. In recent months, the industry has been subjected to a barrage of well-deserved criticism about the poor quality of air transportation, both from the Congress of the United States and from ordinary citizens. There is no doubt that that criticism is well deserved.

The necessity for carriers with widely disparate cost structures to compete on the basis of price has resulted in severe cost cutting and the elimination of many amenities that air travelers have long assumed were necessary. The increase in air travel created by extremely low discount fares has resulted in crowded terminals and full airplanes. Air travel is no longer a pleasant experience in many cases. Moreover, the problems have been compounded by the recent rash of mergers which have created integration problems and employee antagonism.

Under the deregulation theory, it was expected that there would be a wide variety of price and quality of service options, with the consumer capable of choosing which alternatives he desired. I don't think the deregulation proponents expected, however, that service quality would deteriorate to the extent that it has. The theory assumed that the passenger could choose a quality carrier at a higher price or another carrier with poorer accommodations at a lower price.

The marketplace, however, has not worked with complete efficiency to allow the consumer to make that choice. American's SABRE CRS system, for example, has information on 21 million fares.

Senator METZENBAUM. Twenty-one million fares?

Mr. FAHY. Yes, sir, on a worldwide basis. Unfortunately, there is no similar source of information on quality of service. The Department of Transportation does publish some information on oversales, but it abolished reporting of on-time performance under part 234 in 1981. In recent months, the Department of Transportation has given substantial publicity to the number of consumer complaints that it receives, but this is not an adequate substitute for consistent and comprehensive data about the elements of service that are important to the consumer.

American believes that this information can be required, either through the Department of Transportation's rulemaking, or through legislation.

However, there are certain important elements that must be included in any bill or regulation. They are included in the petition for rulemaking that we filed on May 8, 1987, with the Department of Transportation. The key element of our proposal was that this material be reported on computer tape so that the Department of Transportation or a service bureau could consolidate the informa-

tion for distribution to CRS vendors, which would include them in service quality displays in their CRS systems. American proposed that reporting be required in the following categories:

On-time performance—We proposed that carriers report the percentage of flights operating on time or within 15 minutes on a flight-by-flight, hub and system basis.

Flight cancellations—We proposed that current flight cancellation data reported on form 41, schedule T-3(A), be included in the service quality data bank.

Discount fare seats—We proposed that carriers report on a monthly basis the percentage of their total seats offered at capacity-controlled discount fares.

Reservations Answering Time—We proposed that each carrier report on a monthly basis the percentage of all telephone calls to its reservations department actually answered within 20 seconds and the average number of seconds required to answer each call.

Baggage Handling Statistics—We proposed that each carrier report monthly the percentage of its bags that are lost or involuntarily delayed.

Misconnected passengers—We also proposed that each carrier report on the percentage of carriers at each hub airport who failed to make their intended online connections.

Cabin configuration—We propose that each carrier report by aircraft type the amount of cubic feet of space available for storage, the number of lavatories, and its policies with respect to acceptance of carry-on baggage.

Many of our proposals received opposition from other airlines, but we believe that all of them, including the proposals directly impacting on service quality, such as reservations answering time and cabin configuration, to which other carriers particularly objected, are important information that consumers should have available when they make their decisions on airplane travel. We were pleased that the Department of Transportation's Notice of Proposed Rulemaking included our suggestions for comment. And we hope that they will ultimately be adopted in the Department of Transportation's rule.

Senator METZENBAUM. Do you think airlines should be required, at the time a passenger makes a reservation, to say, for example, that the passenger will not be flying on American, but instead will be flying on an associated carrier of yours?

Mr. FAHY. Yes.

Senator METZENBAUM. I, myself, am very distrubed when I think I'm flying on one of the major airlines only to come out to find some small plane that doesn't have a lavatory, crowds you in, makes you climb over some barrier. I may be willing to fly on it, but I would like to know about it.

Mr. FAHY. There is a DOT rule that requires disclosure. If anybody who calls American, we tell them they are on American Eagle, a partner of us. CRS displays have an asterisk next to the flight number so the travel agents——

Senator METZENBAUM. I don't think I've ever been told that. I don't fly American that much. You don't fly to Ohio.

Mr. FAHY. Well, we're getting closer.

Senator METZENBAUM. You used to have wonderful service from Cleveland to Columbus. And when I was a State legislator—that is about 112 years ago—I used to fly down every week from Cleveland to Columbus.

Mr. FAHY. I think with our new hub, we now have one or two flights in Ohio that go on——

Senator METZENBAUM. Well, I came in this morning on American. Yesterday I had a good flight from Cleveland to Columbus, and I think it went on to Dallas.

Mr. FAHY. Glad to hear that. However, there are long-term problems affecting airline aviation consumers as well as short term.

During the next several years, American and other airlines will face cost pressures of an unprecedented magnitude. Without firm congressional action, the direct fallout from these pressures is almost certainly to be an even further deterioration of service quality. Let me be specific. As you know, the labor costs of Continental Airlines, the largest part of the Texas Air group, are about half those of the rest of the airline industry. This enormous competitive advantage was originally gained during bankruptcy proceedings in which Continental abrogated its union contracts, canceled retiree health benefits, cut back its active employee health benefits, and eliminated employee pension benefits.

Senator METZENBAUM. What do you think we should do about that? It's very disturbing to this Senator to use bankruptcy courts for them to continue to operate and sell out to somebody and continue on with a very simple way to break the union contract. What do you think?

Mr. FAHY. There are various bills before the Congress which we support. Emerging from that bankruptcy proceeding, the Texas Air group is now the largest airline in the free world. Yet none of the abrogated rights and benefits have been restored. Their health care benefits fall beneath even the bare-bones basic benefits that would be required in Senator Kennedy's minimum health benefits legislation. Moreover, they run a double-breasting operation that is placing enormous pressure on the union employees of Eastern Airlines to make concessions of considerable magnitude.

The labor cost differential between Continental and American places us at a $600 million annual disadvantage. This presents us with an unprecedented dilemma. Being in a service-oriented industry, we need to improve and expand our customer service to better serve the traveling public. But the labor cost differential we face against Continental is so formidable that we will soon need to reduce our costs if Continental continues to offer such low wages and benefits to its employees. Just in retiree health benefits alone, in a few years American will be paying $120 million annually for the same retiree benefits that Continental no longer pays.

Therefore, in answer to your specific question, we suggest the following legislator possibilities:

First, amend or modify S. 548 to make it retroactive for those companies emerging from bankruptcy into healthy operating companies. It is hard to imagine the anger of those retirees of Continental Airlines who lost their health benefits only to see the company emerge from bankruptcy and then, through the lassez faire

policy of the Federal Government, be allowed to grow into the largest airline in the country, without ever having benefits restored.

Also, second, enact as soon as possible S. 1265, Senator Kennedy's minimum health benefit legislation specifically for the airline industry.

A third alternative, require airlines to offer pension benefits to their employees and prohibit airlines from operating a "double-breasting" operation.

Enact an airline employee bill of rights that would protect employees from practices of management that endanger safety or jeopardize consumer services.

Finally, we suggest investigating the long-term impact on consumers of the extraordinary labor cost differential between the Nation's largest air carrier group and the rest of the industry, including the implications for consumers and employees over the next decade.

In short, there are numerous issues that cry out for inquiry and legislation. In addition, we agree with your desire for legislation relating to airline consumer information and labor protection provisions.

We would be delighted to work with you in detail and at length on these many issues. Thank you.

Senator METZENBAUM. Thank you. I want to thank you for your comments. You are saying we are willing to pay health and welfare benefits, but, Senator, we can't do that if somebody else is permitted to use the bankruptcy court in order to avoid their obligation?

Mr. FAHY. That is right.

Senator METZENBAUM. And I think the idea of the minimum health care bill for the airline industry might have a lot of merits. I would like to explore that with you and Senator Kennedy because the one pending now has a long way to go. Where do you stand as far as large airlines in this country are concerned; first, second, third?

Mr. FAHY. Size, we are now third, perhaps fourth.

Senator METZENBAUM. Who is first?

Mr. FAHY. Texas Air Corp. now has over 20 percent of the passenger miles.

Senator METZENBAUM. Second is United?

Mr. FAHY. Yes.

Senator METZENBAUM. Third?

Mr. FAHY. I believe it's American. The one that would be closest is the merged Delta and Western.

Senator METZENBAUM. Did I read somewhere that Continental just took a big loss in its operations?

Mr. FAHY. They lost $71 million in their second quarter. Eastern did make money during the second quarter, but Texas Air Corp. lost money.

Senator METZENBAUM. What did Eastern do? Do they still have a contract with machinists? I believe Eastern still has demanded various concessions from its unions which they have not been willing to do so far. A court case was filed by Eastern's union.

I would like to explore with you this whole question on the survival of airlines attempting to survive by conduct which appears to

be unfair competition. I am interested in pursuing this matter through the antitrust committee or the labor committee.

And Mr. Scocozza, I think this is a matter of the Department of Transportation's. They have some interest in it as well. But I also understand the use of bankruptcy courts to avoid legal responsibilities. As one involved in drafting bankruptcy law amendments in recent years, I'm concerned. And I think it would merit our working together with my staff to see whether or not we can't make some headway. And I would suggest we bring in people such as David Starr and Eddie Correia from the Antitrust Subcommittee, and let's see if we can't make some headway.

American is ranked 13th out of 22 currently. Passenger experience with airlines with better records, fewer complaints, includes U.S. Air, Piedmont and Delta.

Mr. FAHY. I do think in our ranking the last figures, I saw there were around five or six complaints per 10,000 passengers against American compared to about 25 for Continental and Eastern. Most of the major carriers ranked higher than we did; Piedmont, Delta are lower, and they are smaller.

Senator METZENBAUM. Delta trying to catch up?

Mr. FAHY. They have been unfortunate the last few months.

Senator METZENBAUM. Airlines canceling flights for purely economic reasons, can you live with that?

Mr. FAHY. Yes, but I think there are really a lot of cancellations, but they are not done purely for——

Senator METZENBAUM. I say only for purely economic reasons. I think if the load factor is not high enough; Eastern did that or, at least that was reported?

Mr. FAHY. We operate on a monthly basis around 99 percent of all our flights. We don't like to cancel because it messes up the whole schedule for the day through the hub. So, we could live with that, but it is really not as serious a problem as that. It does exist.

Senator METZENBAUM. What do you think about this idea, advertising low fares and only having about 5 percent available?

Mr. FAHY. Well, there has been a change in the industry. We offer low supersaver fares, and we have 30 or 40 percent of all our seats available at our lowest fares. They are not available at 4 or 5 Friday afternoon. We do have some, but we've—I looked at our discount loads yesterday coming up here from Columbus because my son was flying. He had a plane from Hartford to Chicago. We had many seats available at the lowest fare.

Senator METZENBAUM. How do you decide the lowest one?

Mr. FAHY. We have a department monitor seat availability from computer terminals. We have 100 people put those discount seats months in advance. But the discount fares are designed to fill seats that would otherwise be unavailable. And most of those are going to be unavailable on Friday afternoon, but available during the rest of the week.

Senator METZENBAUM. Thank you for appearing. I think your testimony is reasonable, although, I think we might have some concerns with American. I do appreciate your being here. You heard my statement, on American's willingness to change its policy with respect to terminating, not doing it on a liquidated-damage basis,

but doing it on the basis of actual damages. That does conform with the company policy that was represented to me in my office?

Mr. FAHY. Yes, Senator. I understand we did talk to you. We have had some cases in recent months. And we have chosen to prove actual damages other than just rely on liquidated damages. The actual damages do include lost booking fee revenue.

Senator METZENBAUM. Mr. Scocozza and Mr. Fahy, thank you very much for your appearances. I would like to thank all of the witnesses.

The hearing is adjourned.

[Thereupon, the Senate hearing concluded at 10:45 a.m., Monday, August 10, 1987.]

[Prepared statement follows:]

TESTIMONY OF
RICHARD J. FAHY, JR.
ASSOCIATE GENERAL COUNSEL
AMERICAN AIRLINES, INC.

BEFORE THE SUBCOMMITTEE ON ANTITRUST,
MONOPOLIES AND BUSINESS RIGHTS
SENATE COMMITTEE ON THE JUDICIARY

August 10, 1987

My name is Richard J. Fahy, Jr., and I am Associate General Counsel for American Airlines, Inc. I have been the American staff attorney most heavily involved in both consumer service quality and CRS issues for several years. In recent months I have filed a petition of American for rulemaking on service quality disclosure issues and American's comments on the DOT's proposed rules.

I understand that the purpose of my testimony today is to address S. 885 and S. 1485, two bills designed to provide airline service quality information to consumers. American certainly agrees that immediate action is required to insure that consumers have better information about the quality of airline service. In recent months, the industry has been subject to a barrage of criticism about the poor quality of air transportation, both from the Congress of the United States and from ordinary citizens. There is no doubt that that criticism is well deserved. The necessity for carriers with widely disparate cost structures to compete on the basis of price has resulted in severe cost cutting and the elimination of many amenities that air travelers have long assumed were necessary. The increase in air travel created by extremely low discount fares has resulted in crowded terminals

and full airplanes. Air travel is no longer a pleasant experience in many cases. Moreover, the problems have been compounded by the recent rash of mergers which have created integration problems and employee antagonism.

Under deregulation theory, it was expected that there would be a wide variety of price and quality of service options, with the consumer capable of choosing which alternatives he desired. I don't think that deregulation proponents expected, however, that service quality would deteriorate to the extent that it has. The theory assumed that the passenger could choose a quality carrier at a higher price or another carrier with poorer accommodations at a lower price.

The marketplace, however, has not worked with complete efficiency to allow the consumer to make this choice. Information about low fares is widely publicized. American's SABRE CRS system, for example, contains information on over 21 million fares. Unfortunately, there is no similar source of information on quality of service. The Department of Transportation does publish some information on oversales, but it abolished reporting of on-time performance under Part 234 in 1981. In recent months, the DOT has given substantial publicity to the number of consumer complaints that it receives, but this is not an adequate substitute for consistent and comprehensive data about the elements of service that are important to the consumer.

American believes that this information can be required either through the DOT's proposed rulemaking, or through

legislation. However, there are certain important elements that must be included in any bill or regulation. These elements were included in the Petition for Rulemaking that we filed on May 8, 1987 with the DOT. The key element of our proposal was that this material be reported on computer tape so that the Department of Transportation or a service bureau could consolidate the information for distribution to CRS vendors which would include them in service quality displays in their CRS systems. American proposed that reporting be required in the following categories:

-- On-time performance. American proposed that carriers report the percentage of flights operating on time or within 15 minutes on a flight-by-flight, hub and system basis.

-- Flight cancellations. We proposed that the current flight cancellation data reported on Form 41 Schedule T-3(A) be included in the service quality data bank.

-- Discount Fare Seats. We proposed that carriers report on a monthly basis the percentage of their total seats offered at capacity controlled discount fares.

-- Reservations Answering Time. We proposed that each carrier report on a monthly basis the percentage of all telephone calls to its reservations department actually answered within 20 seconds and the average number of seconds required to answer each call.

-- Baggage Handling Statistics. We proposed that each carrier report monthly the percentage of its bags that are lost or involuntarily delayed.

-- Misconnected passengers. We also proposed that each carrier report on the percentage of carriers at each hub airport who failed to make their intended online connections.

-- Cabin configuration. We proposed that each carrier report by aircraft type the amount of cubic feet of space available for storage, the number of lavatories, and its policies with respect to acceptance of carry on baggage.

Many of our proposals received opposition from other airlines, but we believe that all of them, including the proposals directly impacting on service quality, such as reservations answering time and cabin configuration, to which other carriers particularly objected, are important information that consumers should have available when they make their decisions on airplane travel. We were pleased that the DOT Notice of Proposed Rulemaking included our suggestions for comment, and we hope that they will ultimately be adopted in the DOT's rule.

PROPOSED SENATE BILLS

I have reviewed two proposed consumer service quality bills introduced in the Senate. The first is the "Airline Consumer Rights Act of 1987", S. 885, introduced by Senator Metzenbaum, and the second the "Air Passenger Protection Act of 1987", S. 1485, introduced by Senator Ford of Kentucky. Both bills are pointed in the right direction -- requiring greater disclosure of service quality information.

S. 885 includes many of the items that American included in its petition for rulemaking, including the number of late takeoffs and arrivals, the number of cancellations, and reporting on lost and delayed luggage. It also contains the language requiring disclosure on the ticket of the carrier's policy with respect to cancellations, overbooking and lost or delayed baggage. Many of these areas are already covered by DOT regulations. I can only note with respect to this item that the more information that is required on the ticket, the less useful the ticket becomes to the passenger, and the less likely that all the details will be read. In addition, the ticket may be given to the passenger too late for the information to be useful. I think this particularly applies to information on the carrier's policy with respect to cancellation, delays, and overbooking. By the time the passenger receives the information on the ticket, he will have already chosen his carrier.

The bill also proposed to require that the carrier disclose at the time of reservation or purchase a description of the aircraft, the number of late takeoffs and arrivals, and the baggage delivery record with respect to each route, as well as other information. One problem with this provision is that the passenger's contact in making the reservation is most often a travel agent, and not the carrier to whom the statute would apply. A requirement to include all this information in the reservations conversation would also result in more talk time, higher costs, and ultimately increased ticket prices.

S.1485 also contains numerous provisions that would be very helpful to consumers in choosing airlines, and is particularly helpful by requiring that such information be displayed in CRS systems. American proposed in its petition for rulemaking that all vendors include service quality displays, but other vendors have indicated opposition.

Some of the specific provisions of S. 1485 do seem to require some fine tuning if they are to provide the most useful information to the public. For example:

1. Section 420(a)(1) requires reporting of on-time performance, which is defined as the "average time of actual departure or arrival past the schedule departure or scheduled arrival time." The concept of measuring on-time performance on the basis of average delay is contrary to the traditional form of measurement in the industry. For 30 years, flights have been measured as on time if they arrived within 15 minutes of the scheduled arrival time. This probably would give a clearer picture of the impact of delay on a flight. A flight might arrive within 15 minutes of schedule only 75% of the time, but its average delay calculated on a monthly basis might be only five minutes. I suspect that use of average figures would minimize the impact of delay information, and would obscure its importance in the mind of the consumer.

2. Section 420(a)(2)(B) requires the reporting of mishandled baggage, but would not actually measure the number of delayed or lost bags. Rather it would count the number of passengers whose bags are lost and who notified the air carrier.

We think that the bill should focus on the number of bags, rather than the number of passengers.

3. Section 421(a) is the one section of the bill with which American disagrees. It would require that the Department of Transportation establish minimum realistic block times to be used in the construction of schedules, and would preclude CRS vendors from showing any block time that is less than that approved by DOT. This would create a tremendous new federal bureaucracy that would be devoted entirely to the calculation of block times on numerous nonstop segments operated by airlines within the United States. Since block times vary not only by segment, but by time of the day and season of the year, hundreds of people would be required to do this boring job of calculation. For example, American operates 1,975 daily flights over several hundred nonstop segments. The Department would have to calculate varying block times for each of these segments, as well as all the segments operated by all the other airlines in the United States. A far better solution is to allow airlines to calculate their own block times but to disclose their on-time reliability. The marketplace will then force airlines either to publish realistic block times, or to lose passengers who are concerned about schedule reliability.

AIRLINE COST DISPARITIES

The legislation that you have drafted, together with the bill reported out of the Senate Commerce Committee, address the most immediate aviation consumer problems -- and quite well at

that. In the long run, however, there loom even greater and more troublesome consumer problems.

During the next several years, American and other airlines will face cost pressures of an unprecedented magnitude. Without firm congressional action, the direct fall-out from these pressures is almost certainly to be an even further deterioration of service quality. Let me be specific. As you may know, the labor costs of Continental Airlines, the largest part of the Texas Air group, are about half those of the rest of the airline industry. This enormous competitive advantage was originally gained during bankruptcy proceedings in which Continental abrogated its union contracts, cancelled retiree health benefits, cut back its active employee health benefits, and eliminated employee pension benefits.

Emerging from that bankruptcy proceeding, the Texas Air group is now the largest airline in the free world. Yet none of th abrogated rights and benefits have been restored. Their health care benefits fall beneath even the bare-bones basic benefits that would be required in Senator Kennedy's minimum health benefits legislation. Moreover, they run a double-breasting operation that is placing enormous pressure on the union employees of Eastern Airlines to make concessions of considerable magnitude.

The labor cost differential between Continental and American places us at a $600 million annual disadvantage. This presents us with an unprecedented dilemma. Being in a service-oriented

industry, we need to improve and expand our customer service to better serve the travelling public. But the labor cost differential we face against Continental is so formidable that we will soon face the need to reduce our costs if Continental continues to offer such low wages and benefits to its employees.

Just in retiree health benefits alone, in a few years American will be paying $120 million annually for the same retiree benefits that Continental no longer pays.

Therefore, if you would like to explore legislation that would restore competitive balance among airlines and save consumers from even more frustrations, we suggest the following possibilities:

1. Amend or modify S. 548, your retiree health benefit legislation, to make it retroactive for those companies that have emerged from bankruptcy into healthy operating companies. It is hard to imagine the anger that must be felt by retirees of Continental Airlines who lost their health benefits only to see the company emerge from bankruptcy and then, through the lassiez faire policy of the federal government, be allowed to grow into the largest airline in the country, without ever having their benefits restored.

2. Enact as soon as possible S. 1265, Senator Kennedy's minimum health benefit legislation. In the alternative, introduce minimum health benefit legislation specifically for the airline industry.

3. Enact legislation that would require airlines to offer pension benefits to their employees.

4. Enact legislation that would prohibit airlines from operating a "double breasting" operation.

5. Enact an airline employee bill of rights that would protect employees from practices of management that endanger safety or jeopardize consumer services.

6. Investigate the long-term impact on consumers of the extraordinary labor cost differential between the nation's largest air carrier group and the rest of the industry, including the implications for consumers and employees over the next decade.

In short, there are numerous issues that cry out for inquiry and legislation. In addition, we agree with your desire for legislation relating to airline consumer information and labor protection provisions. We would be delighted to work with you in detail and at length on these many issues.